GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(*G.O. Rt. No. 150/AIL/Lab./J/2011, dated 17th August 2011)*

NOTIFICATION

Whereas, the Award in I.D.No.34/2004, dated 31-3-2011 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Sri Bharathi Mills, Puducherry and Sri Bharathi Mills Pondicherry Thozhilalargal Urimai Padukappu Sangam over non-employment of 17 workers *viz.,* Thiruvalargal (1) R.Chandra, (2) E. Boobathi, (3) K. Indira Gandhi, (4) V. Nagammal, (5) R.Selvi, (6) V. Krishnamurthy, (7) K. Mugunthan, (8) V. Rajendiran, (9) R. Ragupathi, (10) D. Sriram Kumar, (11) S. Sugumar, (l2) M.P. Arumugam, (13) R. Jeyavelu, (14) K. Prakash, (15) S. Palanivel, (16) D.Venkat, (17) A. Murugan has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

N. Appa Rao,
Under Secretary to Government (Labour)

———

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. Mohandass, m.a., m.l.,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

Thursday, the 31st day of March 2011

I.D. No. 34/2004

The President/Secretary,
Sri Bharathi Mills Pondicherry
Thozhilalar Urimai Padukappu Sangam,
Pondicherry.
RTU No. 1069/97. .. Petitioner

Versus

The General Manager,
Sri Bharathi Mills, NTC,
P.O. Box No. 10, Mudaliarpet,
Pondicherry. .. Respondent

This petition coming before me for final hearing on 28-3-2011 in the presence of Thiru G. Mohan Keerthi Kumar, advocate for the petitioner, Thiru K. Ravikumar, advocate for the respondent, upon hearing both sides, after perusing the case records and having stood over for consideration till this day, this court delivered the following:

AWARD

This industrial dispute arises out of the reference made by the Government of Pondicherry, *vide* G.O. Rt. No. 123/2004/Lab./AIL/J, dated 5-10-2004 of the Labour Department, Pondicherry, to resolve the following dispute between the petitioner and the respondent, *viz.,*

(1) Whether the non-employment of (1) R. Chandra, (2) E.Boobathi, (3) K. lndira Gandhi, (4) V. Nagammal, (5) R. Selvi, (6) V. Krishnamurthy, (7) K. Mugunthan, (8) V. Rajendiran, (9) R.Ragupathi, (10) D. Sriram Kumar, (11) S.Sugumar, (12) M.P. Arumugam, (13) R. Jeyavelu, (14) K. Prakash, (15) S. Palanivel, (16) D.Venkat and (17) A. Murugan, are justified or not?

(2) To what remedy, they are entitled to?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. The petitioner in his claim statement would aver that the petitioner union is a registered trade union in No. 1069/97. The following 17 persons have entered employment on different dates and had served on a temporary basis for about five to six years on a meagre payment of around ₹ 55 to ₹ 85 per day.

(1) R. Chandra,
(2) E. Boobathi,
(3) K. lndira Gandhi,
(4) V. Nagammal,
(5) R. Selvi,
(6) V. Krishnamurthy,
(7) K. Mugunthan,
(8) V. Rajendiran,
(9) R. Ragupathi,
(10) D. Sriram Kumar,
(11) S. Sugumar,
(12) M.P. Arumugam,
(13) R. Jeyavelu,
(14) K. Prakash,
(15) S. Palanivel,
(16) D.Venkat, and
(17) A. Murugan

Out of the 17 workmen as above listed, five persons were given employment by the respondent management on compassionate ground, namely (1) R. Chandra, (2) E. Boopathi, (3) K. lndira Gandhi, (4) R. Selvi and (5) K.Mugunthan. When these workmen approached the respondent management for the regularisation of their jobs, with all the benefits, on par with the regular

workmen, the respondent management had overacted by refusing employment to all the 17 workmen, without assigning any reason. After refusing employment to the abovesaid workmen, the management have given employment to around eighty persons. These persons had opted for V.R.S and had left the job. They were recalled and given employment in preference to the abovesaid 17 persons. The management have also regularised the following workmen with token Nos. 3102, 3103, 3104, 3105, 3107 and 3108. The respondent management is acting smart by not issuing termination order on the hope that these 17 workmen have not valid papers to present their grievance before the Labour Forum. Hence, it is prayed to peruse the documents filed herewith and to declare the non-employment of the list mentioned workmen is not justified and to direct the respondent management to reinstate all the 17 workmen along with back wages and other benefits.

3. The averments narrated in the counter are as follows:

The respondent denies that out of 17 workmen listed, 5 were given employment by the respondent management on compassionate grounds and balance 12 were employed on direct selection. The respondent management further denies that the 17 workmen approached the respondent for regularisation of their jobs and due to such a demand, the respondent had refused employment to the 17 workmen. The respondent further denies that only after refusing employment to the 17 workmen, the respondent had given employment to 80 persons. The above said 80 persons were former workers, who were regularly working in the respondent mills and they had opted for retirement under the V.R.S. They were all experienced hands and as and when there is a vacancy in the mills, the respondent mills requires experienced hands to do the workers for that day, so they would be looking into the V.R.S. optees and these 80 persons were given daily employment as gate casuals and not as temporary employees.

The respondent states that the workmen under token Nos. 3102 (llayaperumal), 3103 (Kumar), 3104 (Elumalai), 3105 (Jeevanandam), 3106 (Sridharan), 3107 (Munisamy) and 3108 (Adiselva) were working in the canteen for a long time. Hence, they were regularised during May 1986, as everyone has completed more than 240 days working in each years of their casual service period. The respondent further states that section 38 of the Employees State Insurance Act, 1948 requires that all the employees shall be insured. According to section 2(9) of E.S.I. Act, employees include even casual labourers, contract labourers and temporary employees. As required by the Acts the information provided by the management and in turn the E.S.I. cards were issued by the corporation from the date of entry into the mills. The definition of employee as per the E.S.I. Act is completely different from the one defined in industrial disputes. The respondent further states that section 38 of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 requires that all the employees shall be brought under the purview of the Act. According to section 2(f) of E.P.F. Act, employees include even casual labourers, contract labourers and temporary employees. As required by the Act, the information shall be provided by the management to the concerned office. The temporary employees, casual employees, employees received monthly wages, employees receiving weekly wages, employee receiving wages hourly basis, piece rated shall have to be brought under the purview of the Act. The definition of employee as per the E.P.F. Act is completely different from the one defined in industrial disputes.

It is further stated that as per practice and standing orders of the mills, any person can be employee on gate casuals first and then only become a temporary employee and then only can be confirmed. In this case, all the above listed petitioners are gate casual and have never been employed as temporary for them to be confirmed. As on 31-3-2005, the accumulated loss of the respondent mills stood at ₹ 87.12 crores and its yearly loss at ₹ 10.40 crores. As a result of which the respondent has not been able to remit even the statutory dues to the concerned authorities in time.

It is further states by the respondent management that the mills which were earlier under National Textiles Corporation, were decided to be closed by the NTC as they were termed to be unviable as per the Revival-*cum*-Rehabilitation Scheme. In order to protect the interest of the workmen, the Government of Pondicherry had stepped and taken over the mills directly under the control of Pondicherry Textiles Corporation, *vide* Gazette notification, dated 19-4-2005. Again on 4-7-2005 *vide* a gazette notification G.O. Ms.No.11/2005-lnd-B, the respondent were transformed as a company under the name of Swadeshee-Bharathee Textiles Mill Limited, Pondicherry. The respondent mill is running under a huge loss, some of it may be salvaged increasing production. There is no privity of contract between the gate casuals and the respondent mills. The gate casuals are paid daily wages at the rate higher than the minimum wages fixed by the Government besides benefits such as bonus, E.S.I. coverage, canteen facilities. The above said 17 workmen are gate casuals and they have neither privity of contract nor employment guarantee. The above said 17 years have not put in the requisite number of days per year even to be considered temporary workers. The claim statement filed by the petitioners is

devoid of merits and lack *bona fides,* hence the respondent management prays for dismissal of the claim statement.

4. *Now the point for determination is:*

"Whether the petitioner is entitled for the relief sought for?"

On point:

5. The contention of the petitioner is that the petition mentioned 17 workmen have entered employment on various dates and had served on a temporary basis for about five to six years and when these workmen approached the respondent for their regularisation, the respondent overacted by refusing employment to all 17 workmen.

6. The contention of the respondent is that as per the practice and standing orders of the mills, any person can be employed as gate casuals first and then become a temporary employee and then they will be confirmed and the petition mentioned workmen have been gate casuals and have never been employed as temporary for them to be confirmed. Further contention of the respondent is that whenever any permanent workmen is on leave or is absent on any particular date, the gate casuals, who wait outside the gate for daily employment are called inside the mill to work in the said vacant place in order to run the machines and there is no privity of contract between the gate casuals and the respondent management.

7. There is no dispute that the petition mentioned workmen were the employees in the respondent mills. There is also no dispute that some of the said workmen were joined duty from 1997 and some of them from 2000 till 2004.

8. The President of the petitioner's Association was examined as P.W.1. P.W.1 in his evidence has stated that out of 17 workmen listed above, five persons namely, R. Chandra, E. Boopathi, K. Indira Gandhi, R. Selvi and K. Mugundan were given employment by the respondent management on compassionate ground and rest of the workmen were employed on direct selection and these 17 workmen have entered employment on different dates and had served on a temporary basis for about five to six years on a meagre payment of around ₹ 55 to ₹ 85 per day and when the said workmen approached the respondent for their regularisation, they were denied employment. On the side of the petitioner, the letter, dated 6-3-1998 sent by the respondent to one of the petition mentioned workmen by name Chandra was marked as Ex.P3 and the letter, dated 7-2-1998 to one Boopathi as Ex.P7. A perusal of Ex.P3 and Ex.P7 reveals that the respondent has called for the particulars to prove that they were the legal heirs of the deceased workmen, who were employed in the respondent mills, to give employment to them under compassionate ground. When the respondent has intended to give the employment to those workmen under compassionate ground, how can say that these workmen were the gate casuals and there is no privity of contract between them with those workmen.

9. Further on the side of the petitioner, the particulars of the petition mentioned workmen was marked as Ex.P59. Ex.P59. contains the date of joining, date of termination, ticket No., ESI No. department, designation and the monthly salary of the petition mentioned workmen. A perusal of Ex.P59 reveals that the designation has been given and the department has been allotted to each and every petition mentioned workmen. Ex.P59 is not challenged by the respondent. Hence, these facts would clearly show that the petition mentioned workmen were not the gate casuals as stated by the respondent. Further on the side of the respondent, there is no document filed to show that the petition mentioned workers were the gate casuals in the respondent mills. Hence, this court comes to the conclusion that the petition mentioned workers were the temporary employees and not gate casuals as stated by the respondent.

10. Next contention of the petitioner is that the respondent management has regularised the workmen with token Nos.3102, 3103, 3104, 3105, 3106, 3107 and 3108, but when the petition mentioned workmen were approached for their regularisation, they were denied employment by the respondent.

11. On the other hand, the contention of the respondent is that those workmen were working in the canteen, which is run by the respondent mills and they have completed for more than 240 days working in each year of the casual service period and hence they were regularised during May 1986. On the side of the respondent, they have marked the Casual Muster Roll concerning the petition mentioned workmen pertaining to the months October 2001 and March 2002 as Ex.R2, April 2002 to July 2002 as Ex.R3, October 2002 to March 2003 as Ex.R4, July 2003 to September 2003 as Ex.R5, October 2003 to December 2003 as Ex.R6, August 2002, September 2002, April 2003 and May 2003 as Ex.R7, Payment Register from 1-11-2001 to 31-12-2001 as Ex.R8, Payment Register from 1-1-2002 to 31-12-2002 as Ex.R9, Payment Register from 1-1-2003 to 15-3-2003 as Ex.R10, Payment Register from 1-11-2003 to 31-12-2003 as Ex.R11. The learned counsel for the respondent has contended that as per the above documents none of the petition mentioned workers have put in the requisite number of days of work per year from the period from 2001 to 2003. In order to prove the above facts, the General Manager of the respondent mill was examined as R.W.2. But R.W.2 during the cross-examination, has admitted that the petition mentioned workers were working in the respondent mills from 1997 and he has not produced any records from the year 1997 to 2000

before this court. He has also admitted that he has not produced any records for the period from January 2001 to October 2001 and he has also not produced any records for the year 2003 before this court. The relevant portion of his evidence is as follows:

"மனுதாரர்கள் 1997-ல் இருந்து பணிபுரிகிறார்கள் என்றால் இருக்கலாம். 1997 முதல் 2000 வரையிலான ஆவணங்களை இந்த நீதிமன்றத்தில் தாக்கல் செய்யவில்லை என்றால் சரிதான். 2001-ம் ஆண்டு ஜனவரி மாதம் முதல் அக்டோபர் மாதம் வரையிலான ஆவணங்களை தாக்கல் செய்யவில்லை என்றால் சரிதான். ..... 2003-ஆம் ஆண்டிற்குண்டான ஆவணங்களை முழுமையாக தாக்கல் செய்யவில்லை என்றால் சரிதான்".

When the respondent has admitted that the petition mentioned workmen were working from the year 1997 in their mills, it is their duty to produce all the records from the year 1997 till the date of termination to prove that they were not completed the requisite number of days of work per year. The production of documents under Ex.R2 to Ex.R11 by the respondent would show that they have produced the said documents, which are in their favour to screen the fact that the petition mentioned workmen have been completed the requisite number of days of work per year from 1997 to 2003. If all the documents pertaining to the period from 1997 to 2003 would have been produced before this court, the real truth will come out. Without producing those documents, the respondent cannot say that the petition mentioned workmen have not completed the requisite number of days of work per year. Hence, the contention of learned counsel for the respondent in this regard cannot be accepted.

12. Next contention of learned counsel for the petitioner is that the E.S.I. card has been issued under the E.S.I. Act to the petition mentioned workmen and they cannot be terminated without issuing any termination order and this act of respondent is against the labour laws. In order to support his claim, the petitioner has marked the copy of the E.S.I. Card of Chandra, Boopathy, Indira Gandhi, Nagammal, Selvi, V. Krishnamoorthy, Mugundan, Rajendran, Ragupathy, Sriramkumar, S. Sugumar, M.P. Arumugam, Jayavelu, K. Prakash, Murugan as Ex.P6, Ex.P10, Ex.P13, Ex.P16, Ex.P19, Ex.P22, Ex.P25, Ex.P28, Ex.P31, Ex.P34, Ex.P37, Ex.P40, Ex.P43, Ex.P46 and Ex.P53 respectively.

13. On the side of the respondent, R.W.2 has stated that under Employees Provident Fund and Miscellaneous Provision Act, 1952 requires that all the employees shall be brought under the purview of the Act and as per section 2(f) of E.P.F. Act, the employees include even casual labourers, contract labour and temporary employees and hence as per the E.P.F. Act, all the employees including permanent employees, temporary employees, casual employees, employee receiving monthly wages, weekly wages, hourly basis piece rated employees, contract labours, paid apprentice, paid trainee and paid probationers will have to be brought under the purview of the Act and are given coverage under the Act in order to protect their interests.

14. In this case, the respondent has claimed that the petition mentioned workmen were the gate casuals and as per the practice and standing orders of the mills, any person can be employed as gate casuals first and then become a temporary employee and thereafter only they can be confirmed. But as discussed earlier, the respondent has failed to prove that the petitioners were the gate casuals under the respondent mills. RW2 himself has admitted that the petition mentioned workmen were working in their mills from 1997 to 2004. When the respondent has extracted the work from them for more than five years, it is not fair to terminate them from service without issuing any notice without any reason. Hence, it was necessary to have given opportunity to the petition mentioned workmen before coming to the conclusion that they were not found suitable or fit for being continued in service. Neither such opportunity was given to them, nor principles of natural justice have been complied with. Therefore, the termination of service of the said workmen was bad.

15. The learned counsel for the petitioner has submitted that while deciding this industrial dispute the following facts, points and details may be taken into consideration:

(a) The Bharathi Mills, the respondent management is in existence since last 80 years.

(b) The respondent management came under the National Textile Corporation from 10-11-1968 to 31-3-2005. The administration of the mill was directly under the control of the officers of NTC at Coimbatore.

(c) From 1-4-2005 the respondent management came under the Pondicherry Textile Corporation from 1-4-2005.

(d) The 17 workmen were appointed by the management when it was under N.T.C. wives of the deceased workmen were also given employment on compassionate ground.

(e) When these 17 workmen demanded the regularisation of the employment, they were terminated from service. This act amounts to victimisation of the workmen.

(f) Under N.T.C. the management had 436 vacancies, but these workmen were not offered employment. Some 80 new workmen were taken on employment by the management.

(g) When the respondent management was taken over by P.T.C. there were 42 vacancies. This information was obtained through R.T.I. Act.

(h) 17 workmen under non-employed have put in required years of service to be regularised as permanent workmen. The respondent management had remained silent for over three years during the pendency of industrial dispute No. 34/2004 and one more year has been consumed by way of filing writ application.

16. It is pertinent to point out that the Government of Pondicherry through its Labour Department has made the reference to this court to decide the issue whether the non-employment of the above-mentioned workmen is justified or not and accordingly, the petitioner has filed the claim statement. When the reference has been made to this court by the Government to decide about the particular issue, this court cannot go and decide the other matters, which are not related to this case.

17. The leaned counsel for the petitioner further submitted that since number of vacancies are existing in the respondent mills, he prays this court to issue direction to the respondent to regularise the said 17 workmen in the existing vacancies. To prove his claim, the petitioner has marked the particulars regarding the vacancies in the respondent mills, which have been obtained under R.T.I. Act as Ex.R58. A perusal of Ex.R58 reveals that there are 42 vacancies are existing in the respondent mills for the period from 1-4-2005 to 8-3-2010.

18. But on the side of the respondent, it is contended that as on 31-3-2005 the accumulated loss of the respondent mills stood at ₹ 87.12 crores and its yearly loss at ₹ 10.40 crores and as on 31-3-2006 its yearly loss at ₹ 3.84 crores and on account of continuous loss, the working capital of the mill has been completely eroded and presently the mill is able to function only with the supplier's credit and as a result of which, the respondent has not been able to remit even the statutory dues to the concerned authorities in time.

19. As already stated, since the reference has been made to this court to decide about the particular issue *i.e.,* non-employment of the said 17 workers are justified or not, this court cannot insist the respondent to regularise the said workmen in the existing vacancies. However, the request of the petition mentioned workmen for their regularisation can be considered sympathetically by the respondent as and when the vacancies are arisen.

20. For the reasons stated above, this court has come to the conclusion that non-employment of the abovesaid 17 workmen is not justified and hence they are entitled for reinstatement in the respondent mills with other benefits. Accordingly, this point is answered.

21. In the result, the industrial dispute is allowed and the respondent is hereby directed to reinstate the petition mentioned workmen by name (1) R. Chandra, (2) E. Boobathi, (3) K. Indira Gandhi, (4) V. Nagammal, (5) R. Selvi, (6) V. Krishnamurthy, (7) K. Mugunthan, (8) V. Rajendiran, (9) R. Ragupathi, (10) D. Sriram Kumar, (11) S. Sugumar, (12) M.P. Arumugam, (13) R. Jeyavelu, (14) K. Prakash, (15) S. Palanivel, (16) D. Venkat and (17) A. Murugan with continuity of service and 50% of back wages. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 31st day of March 2011.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

———

List of witnesses examined for petitioner :

P.W.1 — 3-11-2010 K. Mohandas

List of witnesses examined for respondent :

R.W.1 — 2-12-2010 V. Krishnamoorthy

R.W.2 — 8-3-2011 P. Muthukumaran

List of exhibits marked for the petitioner :

Ex.P1	24-6-2004	Copy of report of failure of conciliation No. 407/2004/LOC/AIL.
Ex.P2	5-10-2004	Copy of the G.O.Rt.No.123/2004/Lab./AIL/J.
Ex.P3	6-3-1998	Copy of offer of appointment on compassionate grounds to R. Chandra.
Ex.P4	19-2-2004	Copy of the representation letter given by R.Chandra to the respondent management.
Ex.P5	–	Copy of representation letter given by R.Chandra to Labour Officer (Conciliation), Pondicherry.
Ex.P6	–	Copy of E.S.I. card of R.Chandra.
Ex.P7	7-2-1998	Copy of offer of appointment on compassionate grounds to E. Boopathy.
Ex.P8	19-2-2004	Copy of the representation letter given by E. Boopathy to the respondent management.
Ex.P9	–	Copy of representation letter given by E. Boopathy to Labour Officer (Conciliation), Pondicherry.
Ex.P10	–	Copy of E.S.I. card of E. Boopathy.
Ex.P11	19-2-2004	Copy of the representation letter given by K. lndira Gandhi to the respondent management.

Ex.P12— – Copy of representation letter given by K. Indira Gandhi to Labour Officer (Conciliation), Pondicherry.

Ex.P13— – Copy of E.S.I. card of K. Indira Gandhi.

Ex.P14— 19-2-2004 Copy of the representation letter given by V. Nagammal to the respondent management.

Ex.P15— – Copy of representation letter given by V. Nagammal to Labour Officer (Conciliation), Pondicherry.

Ex.P16— 1-10-2002 Copy of E.S.I. card of V.Nagammal.

Ex.P17— 19-2-2004 Copy of the representation letter given by R. Selvi to the respondent management.

Ex.P18— – Copy of representation letter given by R.Selvi to Labour Officer (Conciliation), Pondicherry.

Ex.P19— – Copy of E.S.I. card of R. Selvi.

Ex.P20— 19-2-2004 Copy of the representation letter given by V. Krishnamurthy to the respondent management.

Ex.P21— – Copy of representation letter given by V. Krishnamurthy to Labour Officer (Conciliation), Pondicherry.

Ex.P22— – Copy of E.S.I. card of V. Krishnamurthy

Ex.P23— 19-2-2004 Copy of the representation letter given by K. Mugunthan to the respondent management.

Ex.P24— – Copy of representation letter given by K. Mugunthan to Labour Officer (Conciliation), Pondicherry.

Ex.P25— – Copy of E.S.I. card of K. Muguanthan.

Ex.P26— 19-2-2004 Copy of the representation letter given by V. Rajendiran to the respondent management.

Ex.P27— – Copy of representation letter given by V. Rajendiran to Labour Officer (Conciliation), Pondicherry.

Ex.P28— – Copy of E.S..I card of V. Rajendiran.

Ex.P29— 19-2-2004 Copy of the representation letter given by R. Ragupathi to the respondent management.

Ex.P30— – Copy of representation letter given by R. Ragupathi to Labour Officer (Conciliation), Pondicherry.

Ex.P31— 19-6-2002 Copy of E.S.I. card of R. Ragupathi

Ex.P32— 19-2-2004 Copy of the representation letter given by D. Sriram Kumar to the respondent management.

Ex.P33— – Copy of representation letter given by D. Sriram Kumar to Labour Officer (Conciliation), Pondicherry.

Ex.P34— 31-1-2003 Copy of E.S.I. card of D. Sriramkumar.

Ex.P35— 19-2-2004 Copy of the representation letter given by R.Sugumar to the respondent management.

Ex.P36— – Copy of representation letter given by R. Sugumar to Labour Officer(Conciliation), Pondicherry.

Ex.P37— – Copy of E.S.I. card of R.Sugumar.

Ex.P38— 19-2-2004 Copy of the representation letter given by M. P. Arumugam to the respondent management.

Ex.P39— – Copy of representation letter given by M.P. Arumugam to Labour Officer (Conciliation), Pondicherry.

Ex.P40— – Copy of E.S.I. card of M. P. Arumugam.

Ex.P41— 19-2-2004 Copy of the representation letter given by R. Jeyavelu to the respondent management.

Ex.P42— – Copy of representation letter given by R. Jeyavelu to Labour Officer (Conciliation), Pondicherry.

Ex.P43— – Copy of ESI card of R. Jeyavelu.

Ex.P44— 19-2-2004 Copy of the representation letter given by K. Prakash to the respondent management.

Ex.P45— – Copy of representation letter given by K. Prakash to Labour Officer (Conciliation), Pondicherry.

Ex.P46— – Copy of E.S.I. card of K. Prakash.

Ex.P47— 19-2-2004 Copy of the representation letters given by S. Palanivel to the respondent management.

Ex.P48— – Copy of representation letter given by S. Palanivel to Labour Officer (Conciliation), Pondicherry.

Ex.P49— 19-2-2004 Copy of the representation letter given by D.Venkat to the respondent management.

Ex.P50— – Copy of representation letter given by D.Venkat to Labour Officer (Conciliation), Pondicherry.

Ex.P51— 23-2-2004 Copy of the representation letter given by A. Murugan to the respondent management.

Ex.P52—	–	Copy of representation letter given by A.Murugan to Labour Officer (Conciliation), Pondicherry.
Ex.P53—	–	Copy of E.S.I. card of K. Prakash
Ex.P54—	12-11-2007	Award copy of I D. No.34/2004.
Ex.P55—	23-12-2008	Order in I.A. No. 100/2007 in I.D. No. 34/2004.
Ex.P56—	30-3-2010	Order in W.P. 3708/2009
Ex:P57—	25-3-2008	Gazette notification
Ex.P58—	5-4-2009	Details of vacancies
Ex.P59—	31-5-2010	Service details of workmen

List of exhibits marked for the respondent :

Ex.R1—	30-11-2010	Authorisation letter given to RW.1 by E.S.I. Regional Director.
Ex.R2—	–	Photocopy of casual muster roll containing the petitioners pertaining to the months of October 2001 to March 2002.
Ex.R3—	–	Photocopy of casual muster roll containing the petitioners pertaining to the months of April, 2002 to July 2002.
Ex.R4—	–	Photocopy of casual muster roll containing the petitioners pertaining to the months of October 2002 to March 2003.
Ex.R5—	–	Photocopy of casual muster roll containing the petitioners pertaining to the months of July 2003 to September 2003.
Ex.R6—	–	Photocopy of casual muster roll containing the petitioners pertaining to the months of October 2003 to December 2003.
Ex.R7—	–	Photocopy of casual muster roll containing the petitioners pertaining to the months of August 2002, September 2002, April 2003 and May 2003.
Ex.R8—	–	Photocopy of payment register from 1-11-2001 to 31-12-2001.
Ex.R9—	–	Photocopy of payment register from 1-1-2002 to 31-12-2002.
Ex.R10—	–	Photocopy of payment register from 1-11-2003 to 31-12-2003.
Ex.R11—	–	Photocopy of payment register from 1-1-2003 to 15-3-2003 and from 1-11-2003 to 31-12-2003.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(GO. Rt. No. 151/AIL/Lab./J/2011, dated 17th August 2011)

NOTIFICATION

Whereas, the Award in I.D. No. 10/2007, dated 31-1-2011 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. M.R.F. Limited, Puducherry and Thiru R. Sundararasu (Emp. No.70077) over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), read with the notification issued in Labour Department's G. O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

N. APPA RAO,
Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. MOHANDASS, M.A., M.L.,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

Monday, the 31st day of January 2011

I.D. No. 10/2007

R. Sundararasu (Emp. No. 70077),
S/o. M. Rangasamy,
Keezh Sathamangalam,
Korkadu Post, Villianur *Via,*
Pondicherry-605 101. .. Petitioner/ Workman.

Versus

The Management of M.R.F. Limited,
P. B. No.1, Eripakkam Village,
Nettapakkam Commune,
Pondicherry-605 106. .. Respondent/ Management.

This petition coming before me for final hearing on 31-1-2011 in the presence of Thiru T.Gunasegaran, advocate for the petitioner, Thiruvalargal L. Swaminathan and I.Ilankumar, advocates for the respondent, upon hearing both sides, after perusing the case records and having stood over for consideration till this day, this court delivered the following:

AWARD

This industrial dispute arises out of the reference made by the Government of Pondicherry, *vide* G.O. Rt. No. 47/2007/Lab./AIL/J, dated 14-3-2007 of the Labour Department, Pondicherry, to resolve the following dispute between the petitioner and the respondent, *viz.*,

(1) Whether the non-employment of Mr. R. Sundararasu by the management of M/s. M.R.F. Limited, Puducherry is justified or not?

(2) If not what relief, he is entitled to?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed.

2. The petitioner in his claim statement would aver that the respondent is a Limited Company registered under the Indian Companies Act, which manufactures tyres of all kinds and started its commercial production in the year 1998. At the time of starting its production, all the workers were designated as "Trainees/ Apprentices" for a paltry wage of ₹ 40 per day and the workers who had I.T.I. qualification were paid ₹ 50 per day. The workers were not given the benefits of E.S.I. coverage or the benefits of P.F. coverage. After six months, few workers were given written order of appointment designating them as "Trainees". The management adopted the method of designation as "Trainees/Apprentices" only to deny the benefits of labour welfare legislations and utilising the insecurity in employment, it extracted more than the maximum possible work-load from the workers. After two years in or about the year 2001, the workers by name Thiruvalargal (1) B. Sakthivel, (2) K. Deivasigamani, (3) V. Balamurugan, (4) S. Jayaprakash, (5) S. Bharathiraja, (6) P. Anbouradjou, (7) C. Kumaravelan, (8) P. Pachyappan, (9) A. Sivanandhane, (10) S.Srinivasan and (11) P. Mohan, who had I.T.I, qualification, were issued orders placing them on probation. The management did not have certified standings orders at the time of starting its production. But after about 3 years on 11-6-2001, the management handpicked certain workers to come to the Labour Department to give their consent for the certification of the draft of their standing orders. At that time, the workers decided to have a trade union to protect their rights and they have also started a union in the name of M.R.F. Thozhilalar Sangam and Mr. V. Prakash, advocate was selected as a President. On knowing the fact of formation of union, the management terminated workers, who joined union, resulting in filing the W.P. No. 20270/2001 and W.P. No. 20591/2001 against such termination. The Hon'ble Madras High Court allowed the writ petitions and the management's Writ Appeals Nos.2043 and 2044 of 2002 against the said petitions, which is still pending.

The management thereafter set up its nominees to form a trade union and genuine union filing W.P. No. 20/2002 sought for a direction not to register the union. During the pendency of the said writ petition, within few days after filing of the same and after notice was ordered, the management had its outfit registered under name of the "M.R.F. Employees Union" and a writ Petition No. 1769/2002 was filed against the said registration. In the said writ petition, the Hon'ble High Court ordered the workers to make a representation to the Registrar of Trade Unions and directed the Registrar of Trade Unions to enquire and pass orders thereon. The Registrar of Trade Unions rejected the said representation against which the petitioner's union filed W.P. No. 24183/2005 and the same has been admitted and is pending. In the meantime, as per the direction, the management reinstated the workers except 49 for whose reinstatement, the Division Bench ordered stay in the writ appeal. The petitioner was one such reinstated workers, who has been the member of the M.R.F. Thozhilalar Sangam.

The petitioner joined the service in the respondent's factory on 20-10-1998 and he was employed without any written order of appointment being given to him and was paid the rate of ₹ 40 per day. On 1-7-1999 the respondent's factory had given a first written order of appointment designating the petitioner as "Apprentice" for a period of 6 months. On the expiry of 6 months period set out in the aforesaid order, he was again issued a second order, dated 1-1-2000 again designating him as an ''Apprentice' for another period of 6 months. Further, after expiry of another 6 months, the petitioner was again issued another order, dated 1-7-2000 designating him as "Apprentice". On 1-1-2001 again another order was issued designating him as "Apprentice". Thereafter no order was communicated to him and when he was terminated for the first time for his membership of the M.R.F. Thozhilalar Sangam, no written order was issued on being reinstated under the orders of the Hon'ble High Court, dated 10-6-2002. The model of standing orders which applies to the petitioner, states that worker cannot be kept as trainee beyond 6 months.

The management through its handpicked men, having formed a trade union and having obtained registration for the same and having affiliated with the INTUC, the labour wing of the ruling Congress Party in Pondicherry, entered into a so-called settlement with the said outfit for certification of the standing orders, which standing orders do not apply for the petitioner as the same is as a result of a collusive arrangement with the handpicked men of the opposite party management and same is violated by fraud, collusion and is not a genuine settlement entered into with genuine collective bargaining agent, truly representing the workers. In any event the said settlement being one under section 18(1) of the Industrial Disputes Act, it is not binding on the union in which the petitioner is a member.

The members of M.R.F. Thozhilalar Sangam having been subjected to hostile discrimination and ill treatment and the management unabashedly continuing to flout labour welfare legislation and employing contract labours in direct manufacturing process illegally, the said union decided should sit on a protest fast, to ensure protection of freedom of association of the workers. Accordingly Mr.V. Prakash, advocate, the President of the petitioner's union, sat on a fast at the respondent's factory for consecutive 5 days from 11-2-2004 to 15-2-2004. The petitioner was one among the workers who was active in the union activities relating to the fast that took place on 15-2-2004. The petitioner was issued memo. dated 23-1-2004 by which he was suspended and the petitioner was issued a show cause notice on 25-1-2004, for which petitioner replied through reply letter, dated 19-2-2004. The petitioner was issued an enquiry notice, dated 29-2-2004 stating that the enquiry would be held on 1-3-2004 wherein it was stated that the petitioner's reply was not satisfactory and the management had appointed Mr.K.Babu as an Enquiry Officer and instituted an enquiry. On 1-3-2004, the petitioner denied the charges before the Enquiry Officer and stated that he had already sent an explanation on 29-2-2004 through a registered letter.

The petitioner having studied only up to 10th standard and having no previous experience in cross-examination obviously had his own limitation and denial of assistance of a co-employee by not informing the petitioner of his right to such assistance, is clearly a denial of reasonable opportunity for the petitioner to defend himself. The Enquiry Officer after completion of enquiry, has submitted his report stating that the charges framed against him are proved. The respondent management issued a second show cause notice, dated 3-6-2004 proposing dismissal of the petitioner from service. The impugned dismissal of the petitioner, dated 17-6-2004 is illegal and unjustified. Hence, he prays to pass an order directing the respondent management to reinstate the petitioner in service with back wages, continuity of service and other consequental benefits and award costs.

3. The respondent filed a common counter statement and contended that the petition is not maintainable either on law or on facts. The various allegations and contentions stated in the claim petition are factually incorrect and the petitioner only to achieve unlawful gains through suppression of material facts had approached the Labour Court with unclean hands. The factory at Pondicherry commenced trial production in the year 1998 and manufactured various radial tyres. The factory which started with 12 machines has slowly progressed to install nearly 131 machines as on date. As the manufacture of radial tyres is highly technical and is a complicated one and uses logistics control, the workmen takes time to learn the various skills on each machine and the workers have been inducted in phases over the past years. In order to give employment opportunity to the villagers, the respondent recruited the persons from nearby village of Puducherry who do not possess qualification beyond 12th standard. Only raw hands are recruited as Apprentices. The respondent denies that allegation with regard to E.S.I. and P.F. coverage. As soon as the E.S.I. notification was given all the employees including the Trainees/Apprentices. The Assistant Director of Employment and Training vested with powers convened a meeting of the workmen on 19-9-2001 at the factory premises for the purpose of electing a workmen representative for certification of standing orders with their comments and corrections. The respondent management had engaged a maximum of 258 workmen out of which 16 are probationers, 140 are apprentices and 102 are casuals who are kept under observation to verify their willingness and to ascertain their basic aptitude. On and from 3-1-2001, an agitation commenced in the form of various illegal agitations and undesirable activities. By that time the probationary period of 6 probationers came to an end due to efflux of time and the training of 43 apprentices were determined and with no other alternative 102 casual services were dispensed with. Only at this backdrop, the so-called M.R.F. Thozhilalargal Sangam had filed Writ Petition in W.P. No. 20270/2001 and W.P.No.20591/2001 and the respondent had filed writ appeals against the orders passed in the Writ Petitions in W.A. No. 2043/2002 and W.A. No. 2044/2002 and the same is pending. In the said Writ Appeals, the Hon'ble High Court, Madras had granted stay of reinstating the terminated 49 workmen and other workmen were taken back at their original category and at that time only, the petitioner herein had been reinstated. The respondent further denies that the wages paid are less than the minimum wages. The respondent management always abides by the labour laws and therefore the settlement entered with the union which enjoyed majority cannot be questioned by an isolated person.

The petitioner was suspended from service on 21-1-2004 in contemplation of disciplinary proceedings and the petitioner was issued with a show cause notice on 23-1-2004 followed by an enquiry. After receipt of enquiry report, dated 9-12-2003, the respondent management completely perused the report and was subjectively satisfied that the Enquiry Officer had conducted the enquiry by permitting the petitioner to examine his two witnesses apart from his own deposition.The Enquiry Officer had submitted the enquiry report on 26-5-2004 with an observation that the charges framed against the petitioner are proved beyond reasonable doubt. The second show cause notice was issued on 3-6-2004 to the petitioner along with enquiry

report and the petitioner has submitted his explanation on 9-6-2004. Based on the past records and enquiry report, the management had arrayed to a conclusion that the petitioner herein is not a fit person to be permitted to continue in service and therefore passed an order of dismissal, dated 11-6-2004. The petitioner has no *locus standi* to claim reinstatement even remotely as the respondent management had acted in a fair and judicious manner based on the outcome of the enquiry report, dated 26-5-2004 and to the past record of the claim petitioner which can be proved through documentary evidence.

4. No oral evidence was adduced on both petitioner and respondent's side .On the side of the petitioner, Ex.P1 to Ex.P10 were marked. On the side of the respondent, Ex.R1 to Ex.R.15 were marked.

5. *Now the point for determination is:*

"Whether the non-employment of Mr. R. Sundararasu by the management of M/s. M.R.F. Limited, Puducherry is justified or not?

6. *On point:*

The contention of the petitioner is that the workers decided to have a trade union to protect their rights and they have also started a union in the name of M.R.F. Thozhilalar Sangam and Mr.V. Prakash, advocate was selected as a President. On knowing the fact of formation of union, the management terminated workers, who joined union, resulting in filing the W.P. No. 20270/2001 and W.P. No.20591/2001 against such termination. The Hon'ble Madras High Court allowed the writ petitions and the management's Writ Appeals Nos.2043 and 2044 of 2002 against the said petitions, which is still pending. The management thereafter set up its nominees to form a trade union and genuine union filing W.P. No. 20/2002 sought for a direction not to register the union. During the pendency of the said writ petition, within few days after filing of the same and after notice was ordered, the management had its outfit registered under name of the "M.R.F. Employees Union" and a Writ Petition No. 1769/2002 was filed against the said registration. In the said writ petition, the Hon'ble High Court ordered the workers to make a representation to the Registrar of Trade Unions and directed the Registrar of Trade Unions to enquire and pass orders thereon. The Registrar of Trade Unions rejected the said representation against which the petitioner's union filed W.P. No.24183/2005 and the same has been admitted and is pending. In the meantime, as per the direction, the management reinstated the workers except 49 for whose reinstatement, the Division Bench ordered stay in the writ appeal.

7. The contention of the respondent is that the petitioner had chosen only to elaborate about the formation of M.R.F. Thozhilalargal Sangam led by its Union President V. Prakash and more specifically concentrated about the orders passed by the Hon'ble High Court, Madras in W.P. No.20270/2001, W.P. No.20591/2001 and W.P. No.19/2002, dated 10-6-2002, though the petitioner is not a party to the writ proceedings. He further submitted that the Division Bench of Hon'ble High Court, Madras by its order, dated 4-1-2008 in W.A. No.2043 and 2044/2002 was pleased to modify the order in W.P. No.20591/2001 and W.P. No.19/2002 to the extent that the dismissed/ terminated employees had to approach the Labour Court or the Industrial Tribunal. The learned counsel for the respondent further submitted that in S.L.P. No. 6004-6006/2009 against the judgment and order, dated 4-1-2008 in W.A. Nos.2043 and 2044/2008 of Hon'ble High Court, Madras was preferred by the M.R.F. Thozilalargal Sangam and the Hon'ble Supreme Court by its record of proceedings dismissed the S.L.P. on 12-5-2009.

8. Neither the petitioner nor the respondent has produced the copies of the said judgments of the Hon'ble Supreme Court and Hon'ble High Court, Madras to come to the just decision of the case. In the absence of sufficient records, this court is not in a position to accept the contention of either the petitioner or the respondent.

9. The contention of the petitioner is that he joined the service of the respondent management on 21-10-1998 without any written order and the first written order of appointment was given on 1-7-1999 designating him as Apprentice for a period of six months, he was again issued a second order, dated 1-1-2000 for another period of six months designating as Apprentice and on the expiry of next period of the six months, he was again issued another order once again designating as Apprentice for a further period of six months on 1-7-2000 and he was again issued another order designating him as Apprentice, dated 1-1-2001 and the model standing orders, which applies to him states that a worker cannot be kept as a Trainee beyond six months.

10. In order to prove his claim, the petitioner was examined himsetf as P.W.1, who has stated about the said facts and through him, Ex.P1 to Ex.P10. Ex.P1 is the first appointment order, dated 1-7-1999 issued to him designating as Apprentice, Ex.P2 is the second order, dated 1-1-2000 and Ex.P3 is the third order, dated 1-1-2001.

11. On the side of the respondent, it is submitted that clause 3 of the certified standing orders of respondent company speaks about the classification of workman and clause 3.6 deals with Apprenticeship under the Apprenticeship Act, 1961, which runs as follows:-

> "..... Company Training Scheme/Trainee means a learner who is paid stipend and whose terms and conditions are governed by the provisions of the Apprentices Act, 1961 and the amendments thereof or one who is recruited to undergo apprenticeship as per company's scheme either as Production

Apprentice or Engineering Apprentice or Apprentice for Service Department. The apprenticeship period will be for 42 months comprising 4 spells, the first spell is for six months and the remaining 3 spells each are for one year duration and the company is not obliged to employ after the conclusion of their apprenticeship. At the expiry of any spell each training will be assessed and evaluated and on satisfactory completion of the training in each spell, the trainee will be put on to training for next spell. On completion of the total apprenticeship period the services will stand automatically terminated. However, they may be considered for the post of Probationer on satisfactory completion of training by the company at its discretion depending upon the exigencies and vacancy position. The status as an apprentice will not change until it is changed by the company in writing.... ....".

12. As per clause 3.6 of apprenticeship under the Apprenticeship Act, 1961, the apprenticeship period will be 42 months comprising four spells, the first spell is six months and the remaining three spells each are for one year and accordingly, the respondent company issued Ex.P1 to Ex.P3 to the petitioner. Hence, there is no violation of standing orders by the respondent company in issuing the appointment order to the petitioner, as stated by the petitioner.

13. The next contention of the petitioner is that since he was active member in the M.R.F. Thozhilalar Sangam and since he was participated in the activities on the said union, he was terminated from service by raising false allegations against him.

14. *Per contra,* the contention of the respondent is that during the period of training, the petitioner had indulged in acts of indiscipline, insubordination, using filthy and obnoxious language, aiding and abetting the co-workers to squat, instigating the other workers were all proved in the enquiry proceedings and hence he was terminated from service. In order to support his claim, the learned counsel for the respondent has relied upon the following decisions:-

2011 L.L.R. 51:

Dismissal from service - Of the Appellant Manager (Sales) for threatening and abusing his superior - He was dismissed from service for misconduct duly proved in disciplinary enquiry -His writ petition against punishment was dismissed - Hence this writ appeal - In view of gravity of charge against the appellant, the punishment of dismissal cannot be stated to be disproportionate to the misconduct - Principles of natural justice were followed and proper opportunity was given to him - No ground found to interfere with the order of dismissal from service as upheld by Learned Single Judge.

2010 L.L.R. 600 :

Industrial Disputes Act, 1947 - Section 11 A, Power of the Labour Court/Industrial Tribunal to give appropriate relief in cases of dismissal or discharge of the workman -Well settled law - Power under section 11 is not an appellate power-Exercise only when punishment imposed is shockingly disproportionate to charges proved in Departmental Inquiry -Punishment of putting him six stages down in pay scale for charge of misappropriation- Not shockingly disproportionate to the charges proved.

2010 L.L.R. 744 :

Constitution of India, 1950 - Enquiry - Validity of - Principles of natural justice have been followed by the Enquiry Officer -Enquiry cannot be faulted on any ground and the findings are in no manner, perverse - No case is made out for interference with the said orders under Article 226 of the Constitution of India.

2010 L.L.R. 993 :

Departmental proceedings - Judicial review of - Scope of -Judicial review is matters of disciplinary proceedings - Is to find out whether the findings are perverse or unreasonable-Writ Court recorded that there is sufficient evidence to support the charges - There is no legal or other infirmity in the order under appeal - Appeal dismissed.

Departmental proceedings - Enquiry report not furnished - In fact the disciplinary authority has not given any findings of its own in respect of charges levelled - Enquiry report annexed with the second show cause notice - No prejudice caused to appellant.

(2008) 5 M.L.J. 733 :

When the charge of habitual absence against the employee was proved and the competent authority/employer imposed a proper punishment, it is not open to the Central Administrative Tribunal to interfere with the quantum of punishment on the premise that the charge of habitual absence of the employee was not grave. Such order of the CAT is clearly erroneous and is liable to be set aside.

(2008)3 M.L.J. 959 (SC) :

Punishment - Of removal from service - Imposed on respondent/teacher on ground of misconduct as he physically assaulted Principal of School - Order of Tribunal quashing removal order and reducing punishment as being disproportionate - Same upheld by High Court in writ petition - Appeal- No good ground for Tribunal to interfere with

punishment of removal imposed on respondent - Impugned order of High Court and Tribunal set aside - Appeal allowed.

2005 (2) C.T.C. 730 :

.. Workman should have pleaded before employer at second show cause notice stage that proposed punishment was harsh and disproportionate to proved misconduct and that employer acted with *mala fide* - (i) Reading of various decisions would show that the following principles of law is laid down; The Tribunal is empowered to enquiry as to whether the enquiry conducted was fair and any principles of natural justice has been violated in the conduct of the enquiry; (ii) The Tribunal is empowered to enquiry as to whether the management *bona fide* came to the conclusion that the dismissal another punishment for the one which is sought to be meted out except when it finds that action of the management is shockingly disproportionate. .. Enquiry was fair and proper and charges were proved and the Tribunal should have approved the action of the employer in dismissing workman.

2001 L.L.R. 587 :

Industrial Disputes Act, 1947 - Section 22 - Prohibition of strikes and lock-outs - Strike in a hospital where public utility services are rendered will contravene the provisions of section 22 - Such a strike would be *per se* illegal - Strike has been totally prohibited in utility service by the notification issued by the State Government - The strike resorted to by the workmen of the hospital is in contravention of the said prohibitory orders of the State Government issued under section 22 of the Industrial Disputes Act and, therefore, this strike is *per se* illegal as it violates the said notification and the prohibition orders.

Dismissal - Of hospital employees for resorting to and instigation for illegal strike - Before initiating disciplinary proceedings, it is not necessary that such a strike be declared as illegal.

2001 L.L.R 1213 :

Dismissal from service of Assistant Branch Manager - who was committed various acts of omission and commission during the period of his posting as enumerated in charge sheet - Disciplinary proceedings initiated - Disciplinary authority dismissed the petitioner from service on the basis of enquiry report - Appellate authority by a reasoned order rejected the appeal - Full opportunity is defend himself given in the enquiry-Hence, no illegality proceedings or order - Dismissal from service of petitioner held not illegal.

2001 L.L.R. 401 (MP HC) :

Dismissal of bus conductor - Checking staff found that out of 23 passengers travelling in the bus 6 were travelling without ticket - The bus has covered 34 kms. From the place wherefrom 6 passengers had boarded the bus - Enquiry held - Charges proved - Dismissal of the conductor ordered -Challenged - Labour Court vitiated enquiry - Ordered reinstatement without back wages - Industrial Court directed reinstatement of the conductor with full back wages - Writ petition by the management - Corporation - High Court quashed the orders of Labour Court and Industrial Court -Dismissal as ordered by the Corporation upheld - A dishonest person could not be allowed to continue in employment - The conductor has lost the confidence.

His writ petition against punishment was dismissed - Hence this writ appeal - In view of gravity of charge against the appellant, the punishment of dismissal cannot be stated to be disproportionate to the misconduct - Principles of natural justice were followed and proper opportunity was given to him - No ground found to interfere with the order of dismissal from service as upheld by Learned Single Judge.

2010 L.L.R. 600 :

Industrial Disputes Act, 1947 - Section 11 A, Power of the Labour Court/Industrial Tribunal to give appropriate relief in cases of dismissal or discharge of the workman - Well settled law - Power under section 11 is not an appellate power - Exercise only when punishment imposed is shockingly disproportionate to charges proved in Departmental Inquiry -Punishment of putting him six stages down in pay scale for charge of misappropriation - Not shockingly disproportionate to the charges proved.

2010 L.L.R. 744 :

Constitution of India, 1950 - Enquiry - Validity of - Principles of natural justice have been followed by the Enquiry Officer -Enquiry cannot be faulted on any ground and the findings are in no manner, perverse - No case is made out for interference with the said orders under Article 226 of the Constitution of India.

2010 L.L.R. 993 :

Departmental proceedings - Judicial review of - Scope of - Judicial review is matters of disciplinary proceedings - Is to find out whether the findings are perverse or unreasonable-Writ Court recorded that there is sufficient evidence to support the charges - There is no legal or other infirmity in the order under appeal - Appeal dismissed.

Departmental proceedings - Enquiry report not furnished - In fact the disciplinary authority has not given any findings of its own in respect of charges levelled - Enquiry report annexed with the second show cause notice - No prejudice caused to appellant.

15. In order to prove the misconduct of the petitioner, the respondent has marked the warning letters issued to the petitioner as Ex.R2, Ex.R3, Ex.R5 and the complaints received from the Production Supervisor as Ex.R7 to Ex.R9. A perusal of Ex.R2, Ex.R3 and Ex.R5 reveals that the petitioner was issued warning notices for his absent from work without information and left the work spot during the working hours. Ex.R7 reveals that the complaint was given by one Production Supervisor stating that the petitioner left the work spot during the working hours. Those documents are not challenged by the petitioner.

16. The final contention of the learned counsel for the petitioner is that the domestic enquiry has not been conducted by the Inquiry Officer as prescribed by law in a neutral manner and he has conducted the domestic enquiry in a biased manner without giving any opportunity, which are entitled for the delinquents as per law as well as by the principles of natural justice and moreover the Inquiry Officer has not heard the contentions of the petitioner and the enquiry report has also been submitted with unjustified findings and in fact the petitioner has not committed any misconduct as alleged by the respondent, but the management had taken action by way of issuing show cause notice and by way of conducting domestic enquiry without following the principles of natural justice and on wrong conclusion by the Inquiry Officer the management dismissed the petitioner.

17. The learned counsel for the respondent would submit that they have followed the principles of natural justice while charging the petitioner and conducting the domestic enquiry by a neutral Inquiry Officer and on proved charges alone, the petitioner had been dismissed from his services as per the principles of natural justice and even in the domestic enquiry, the petitioner had been allowed to be assisted by their co-employee. The petitioner has been given fair chance to cross-examine the witnesses and the Inquiry Officer on considering the documents as well the evidences of the management witnesses, had rightly come to the conclusion that the charges of the petitioner were proved and on the conclusion of the report submitted by the Inquiry Officer the petitioner has been terminated from his services by way of punishment for the misconduct committed by him and hence, there is no scope to intervene in the order of this management by the Labour Court.

18. At this stage when I peruse the domestic enquiry report which has been marked as Ex.R12, relating to the petitioner, we can understand that the petitioner was advised to participate in the enquiry and the petitioner has participated in the enquiry. On the side of the respondent, four witnesses were examined and they were cross-examined by the petitioner. The petitioner has not examined any witnesses and marked any documents on his side. But he gave his own statement stating that the management had foisted the charges against him, as he was a active member in M.R.F. Thozhilalar Sangam. With this, the enquiry was completed. The Enquiry Officer based on the evidence of the witnesses and the documents available on records, found that the charges framed against the petitioner are proved and accordingly, he submitted his report to the respondent management. Then based on the enquiry report, the respondent management issued a second show cause notice under Ex.R13 calling for his explanation. The petitioner submitted his written explanation under Ex.R14 and since the explanation submitted by the petitioner was not satisfactory, the respondent management dismissed from service.

19. Hence on perusal of Ex.R12 and other documents filed on the side of the respondent, it is evident that the petitioner was given fair opportunity to defend his case and the respondent has correctly followed the procedure for conducting the domestic enquiry as contemplated under labour law. Hence, the enquiry conducted by the respondent management is fair and proper.

20. The learned counsel for the respondent has pointed out the apprenticeship order under Ex.P1 to Ex.P3, which runs as follows:-

(a) You will be subject to the certified standing orders and regulations as and when become applicable or amended or extended from time to time.

(b) On completion of the apprenticeship period, your services with us as an apprentice will stand automatically terminated.

(c) Should be guilty of any misconduct during the period of apprenticeship, you will be summarily dismissed from apprenticeship without notice or compensation *in lieu of* notice.

(d) The company does not guarantee any automatic confirmation in services at the end of apprenticeship period.

21. The above orders state that on completion of the apprenticeship period, the petitioner's services will stand automatically terminated. Hence, it is the implied factum that the petitioner cannot claim right over the appointment since the appointment itself is not a permanent one or does not guarantee any automatic confirmation in service. In this case, the petitioner on

accepting the above terms and conditions of the order of respondent company, has joined as apprentice and during the period of apprentice, he had committed misconducts such as indiscipline, insubordination and aiding and abetting the co-workers to squat, instigating the other workers, which were proved in the domestic enquiry, conducted by the respondent management and hence, the respondent has taken action against the petitioner by terminating him from service, which is not against law.

22. The misconducts committed by the petitioner have been proved by way of conducting the enquiry and the said misconducts are very grave in nature during the period of apprentice. The respondent management has rightly taken the decision by terminating them from service. The decisions cited by the learned counsel for the respondent are squarely applicable to the present facts and circumstances of the case. However, the documents marked under Ex.P1 to Ex.P10 on the side of the petitioner, are not supported to his claim. Hence, the petitioner is not entitled for reinstatement with continuity of service and back wages. But at the same time, the petitioner has rendered service in the respondent company for more than three years. He was hailing from poor families and he had been walking to this court for the past four years. Hence, considering the age of the petitioner and his family circumstances, the respondent is directed to pay a monetary compensation of ₹ 10,000 to the petitioner. Accordingly, this point is answered.

23. In the result, the petitioner is not entitled for reinstatement with continuity of service and back wages. However, the respondent is directed to pay a sum of ₹ 10,000 towards the monetary compensation to the petitioner. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 31st day of February 2011.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

———

List of witnesses examined for the petitioner:

PW.1 — 22-10-2010 R.Sundararasu

List of witnesses examined for the respondent: Nil

List of exhibits marked for the petitioner:

Ex.P1 — 1-7-1999 Apprenticeship order

Ex.P2 — 1-1-2000 Apprenticeship order

Ex.P3 — 1-1-2001 Apprenticeship order

Ex.P4 — 1-10-2002 Explanations given by the petitioner.

Ex.P5 — 26-2-2004 Enquiry notice

Ex.P6 — 29-2-2004 Explanations given by the petitioner.

Ex.P7 — 12-6-2004 Explanations given by the petitioner.

Ex.P8 — 3-6-2004 Second show cause notice

Ex.P9 — 17-6-2004 Dismissal order

Ex.P10 — 14-3-2007 Failure report issued by the Labour Officer (Conciliation), Pondicherry.

List of exhibits marked for the respondent by consent :

Ex.R1 — 1-7-1999 Apprenticeship order of the petitioner, marked by consent.

Ex.R2 —25-10-2003 Warning letter issued to the petitioner, marked by consent.

Ex.R3 —2-11-2003 Warning letter issued to the petitioner, marked by consent.

Ex.R4 — 6-11-2003 Copy of unclaimed RPAD cover sent to the petitioner, marked by consent.

Ex.R5 — 5-1-2004 Severe warning letter issued to the petitioner marked by consent.

Ex.R6 — 6-1-2004 Copy of unclaimed RPAD cover sent to the petitioner, marked by consent.

Ex.R7 —22-1-2004 Complaint from the Production Supervisor, marked by consent.

Ex.R8 — 22-1-2004 Complaint from the Production Supervisor, marked by consent.

Ex.R9 —22-1-2004 Complaint from the Shift Supervisor, marked by consent.

Ex.R10 — 25-1-2004 Show cause notice issued by the respondent management, marked by consent

Ex.R11 — 29-4-2004 Written explanation of the petitioner for the show cause notice, marked by consent.

Ex.R12— 26-5-2004 Enquiry report with regard to the show cause notice, marked by consent.

Ex.R13— 3-6-2004 Second show-cause notice, issued to the petitioner, marked by consent

Ex.R14—	14-6-2004	Written explanation of the petitioner for second show cause notice, marked by consent.
Ex.R15—	–	Relevant Tamil version of the certified standing orders, marked by consent.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(*G.O. Rt. No. 152/AIL/Lab./J/2011, dated 17th August 2011)*

NOTIFICATION

Whereas, the Award in I. D.No. 12/2007, dated 31-1-2011 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. M.R.F. Limited, Puducherry and Thiru J. Datchinamurthy over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G. O. Ms.No.20/91/Lab./L, dated, 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

N. APPA RAO,
Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. MOHANDASS, M.A., M.L.,
II Additional District Judge,
Presiding Officer, Labour Court.
Pondicherry

Monday, the 31st day of January 2011

I. D. No. 12/2007

J. Datchinamurthy (Emp.No.90091),
S/o. R. Jeyabalan,
Drowpathi Amman Koil Street,
Eripakkam, Kariamanikam Post,
Pondicherry-605 106. . . Petitioner/ Workman.

Versus

The Management of M.R.F. Limited,
P.B. No.1, Eripakkam Village,
Nettapakkam Commune,
Pondicherry-605 106. . . Respondent/ Management.

This petition coming before me for final hearing on 31-1-2011 in the presence of Thiru T. Gunasegaran, advocate for the petitioner, Thiruvlargal L. Swaminathan and I.Ilankumar, advocates for the respondent, upon hearing both sides, after perusing the case records and having stood over for consideration till this day, this court delivered the following:

AWARD

This industrial dispute arises out of the reference made by the Government of Pondicherry, *vide* G.O.Rt.No.50/2007/Lab./AIL/J, dated 14-3-2007 of the Labour Department, Pondicherry, to resolve the following dispute between the petitioner and the respondent, *viz*.,

(1) Whether the non-employment of Mr. J. Datchinamurthy by the management of M/s. M.R.F. Limited, Puducherry is justified or not?

(2) If not, to what relief, he is entitled to?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed.

2. The petitioner in his claim statement would aver that the respondent is a Limited Company registered under the Indian Companies Act, which manufactures tyres of all kinds and started its commercial production in the year 1998. At the time of starting its production, all the workers were designated as "Trainees/ Apprentices" for a paltry wage of ₹ 40 per day and the workers who had I.T.I. qualification were paid ₹ 50 per day. The workers were not given the benefits of E.S.I. coverage or the benefits of P.F. coverage. After six months, few workers were given written order of appointment designating them as "Trainees". The management adopted the method of designation as "Trainees/Apprentices" only to deny the benefits of labour welfare legislations and utilising the insecurity in employment, it extracted more than the maximum possible work-load from the workers. After two years in or about the year 2001, the workers by name Thiruvalargal (1) B. Sakthivel, (2) K.Deivasigamani, (3) V.Balamurugan, (4) S.Jayaprakash, (5) S.Bharathiraja, (6) P.Anbouradjou, (7) C.Kumaravelan, (8) P. Pachyappan, (9) A. Sivanandhane, (10) S. Srinivasan and (11) P.Mohan, who had I.T.I. qualification, were issued orders placing them on probation. The management did not have certified standing orders at the time of starting its production. But after about 3 years on 11-6-2001, the

management handpicked certain workers to come to the Labour Department to give their consent for the certification of the draft of their standing orders. At that time, the workers decided to have a trade union to protect their rights and they have also started a union in the name of M.R.F. Thozhilalar Sangam and Mr.V.Prakash, advocate was selected as a President. On knowing the fact of formation of union, the management terminated workers, who joined union, resulting in filing the W.P. No. 20270/2001 and W. P. No. 20591/2001 against such termination. The Hon'ble Madras High Court allowed the writ petitions and the management's Writ Appeals Nos.2043 and 2044 of 2002 against the said petitions, which is still pending.

The management thereafter set up its nominees to form a trade union and genuine union filing W.P. No.20/2002 sought for a direction not to register the union. During the pendency of the said writ petition, within few days after filing of the same and after notice was ordered, the management had its outfit registered under name of the "M.R.F. Employees Union" and a writ Petition No. 1769/2002 was filed against the said registration. In the said writ petition, the Hon'ble High Court ordered the workers to make a representation to the Registrar of Trade Unions and directed the Registrar of Trade Unions to enquire and pass orders thereon. The Registrar of Trade Unions rejected the said representation against which the petitioner's union filed W.P. No.24183/2005 and the same has been admitted and is pending. In the meantime, as per the direction, the management reinstated the workers except 49 for whose reinstatement, the Division Bench ordered stay in the writ appeal. The petitioner was one such reinstated workers, who has been the member of the M.R.F. Thozhilalar Sangam.

The petitioner joined the service in the respondent's factory orally on 9-6-2000. Further order of appointment was given on 15-1-2000 designating him as "Apprentice" for a period of 6 months. Though he was orally designated as "Apprentice" he was actually doing the work of production as any other workers. In fact, all workers were given orders on the expiry of first 6 months period, except 4 workmen including the petitioner. Thereafter no order was communicated to him and when he was terminated for the first time for his membership of the M.R.F. Thozhilalar Sangam, no written order was issued on being reinstated under the orders of Hon'ble High Court order, dated 10-6-2002.

The management through its handpicked men, having formed a trade union and having obtained registration for the same and having affiliated with the INTUC, the labour wing of the ruling Congress Party in Pondicherry, entered into a so-called settlement with the said outfit for certification of the standing orders, which standing orders do not apply for the petitioner as the same is as a result of a collusive arrangement with the handpicked men of the opposite party management and same is violated by fraud, collusion and is not a genuine settlement entered into with genuine collective bargaining agent, truly representing the workers. In any event the said settlement being one under section 18(1) of the Industrial Disputes Act, it is not binding on the union in which the petitioner is a member.

The members of M.R.F. Thozhilalar Sangam having been subjected to hostile discrimination and ill treatment and the management unabashedly continuing to flout labour welfare legislation and employing contract labours in direct manufacturing process illegally, the said union decided should sit on a protest fast, to ensure protection of freedom of association of the workers. Accordingly Mr.V. Prakash, advocate, the President of the petitioner's union, sat on a fast at the respondent's factory for consecutive 5 days from 11-2-2004 to 15-2-2004. The petitioner was one among the workers who was active in the union activities relating to the fast that took place on 15-2-2004. The petitioner was issued memo suspension pending enquiry, dated 29-1-2004 and 30-1-2004. The enquiry was adjourned to 16-3-2004. The petitioner was suspended and the petitioner was issued a show cause notice on 30-1-2004, for which petitioner replied through reply letter. The petitioner was issued an enquiry notice, dated 16-3-2004 stating that the enquiry would be held on 1-4-2004. The enquiry was conducted and the Enquiry Officer after completing the enquiry, filed his report stating that the charges framed against him are proved. Hence, the respondent management issued a second show cause notice, dated 3-6-2004 proposing dismissal of the petitioner from service. The petitioner gave his explanation on 9-6-2004 objecting to the report. On refusal of the explanation given by the petitioner, the respondent management issued an order of dismissal, dated 11-6-2004 to the petitioner. The impugned dismissal of the petitioner, dated 11-6-2004 is illegal and unjustified. Hence, this industrial dispute is filed to reinstate his service.

3. The respondent filed a common counter statement and contended that the petition is not maintainable either on law or on facts. The various allegations and contentions stated in the claim petition are factually incorrect and the petitioner only to achieve unlawful gains through suppression of material facts had approached the Labour Court with unclean hands. The factory at Pondicherry commenced trial production in the year 1998 and manufactured various radial tyres. The factory which started with 12 machines has slowly progressed to install nearly 131 machines as on date. As the manufacture of radial tyres is highly technical and is a complicated one and uses logistics control, the workmen takes time to learn the various skills on each machine and the workers have been inducted in phases

over the past years. In order to give employment opportunity to the villagers, the respondent recruited the persons from nearby village of Puducherry who do not possess qualification beyond 12th standard. Only raw hands are recruited as Apprentices. The respondent denies that allegation with regard to E.S.I. and P.F. coverage. As soon as the E.S.I. notification was given all the employees including the Trainees/ Apprentices. The Assistant Director of Employment and Training vested with powers convened a meeting of the workmen on 19-9-2001 at the factory premises for the purpose of electing a workmen representative for certification of standing orders with their comments and corrections. The respondent management had engaged a maximum of 258 workmen out of which 16 are probationers, 140 are Apprentices and 102 are casuals who are kept under observation to verify their willingness and to ascertain their basic aptitude. On and from 3-1-2001, an agitation commenced in the form of various illegal agitations and undesirable activities. By that time the probationary period of 6 probationers came to an end due to efflux of time and the training of 43 apprentices were determined and with no other alternative 102 casual services were dispensed with. Only at this backdrop, the so-called M.R.F. Thozhilalargal Sangam had filed Writ Petition in W.P.No.20270/2001 and W.P.No.20591/2001 and the respondent had filed writ appeals against the orders passed in the Writ Petitions in W.A.No.2043/2002 and W.A.No.2044/2002 and the same is pending. In the said writ appeals, the Hon'ble High Court, Madras had granted stay of reinstating the terminated 49 workmen and other workmen were taken back at their original category and at that time only, the petitioner herein had been reinstated. The respondent further denies that the wages paid are less than the minimum wages. The respondent management always abides by the labour laws and therefore the settlement entered with the union which enjoyed majority cannot be questioned by an isolated person.

The petitioner was suspended from service on 29-1-2004 in contemplation of disciplinary proceedings and the petitioner was issued with a show cause notice on 30-1-2004 followed by an enquiry. After receipt of enquiry report dated 26-5-2004, the respondent management completely perused the report and was subjectively satisfied that the Enquiry Officer had conducted the enquiry by permitting the petitioner to examine his two witnesses apart from his own deposition. The Enquiry Officer had submitted the enquiry report on 26-5-2004 with an observation that the charges framed against the petitioner are proved beyond reasonable doubt. The second show cause notice was issued on 3-6-2004 to the petitioner along with enquiry report and the petitioner has submitted his explanation on 9-6-2004. Based on the past records and enquiry report, the management had arrayed to a conclusion that the petitioner herein is not a fit person to be permitted to continue in service and therefore passed an order of dismissal, dated 11-6-2004. The petitioner has no *locus standi* to claim reinstatement even remotely as the respondent management had acted in a fair and judicious manner based on the outcome of the enquiry report, dated 26-5-2004 and to the past record of the claim petitioner which can be proved through documentary evidence. Hence, they pray dismissal of the industrial dispute.

4. On the side of the petitioner, PW.1 was examined and Ex.P1 to Ex.P8 were marked. On the side of the respondent, no oral evidence was adduced and Ex.R1 to Ex.R9 were marked.

5. *Now the point for determination is:*

"Whether the non-employment of J.Datchinamurthy by the management of M/s. MRF Limited, Puducherry is justified or not?"

6. *On point:*

The contention of the petitioner is that the workers decided to have a trade union to protect their rights and they have also started a union in the name of M.R.F. Thozhilalar Sangam and Mr.V.Prakash, advocate was selected as a President. On knowing the fact of formation of union, the management terminated workers, who joined union, resulting in filing the W.P. No.20270/ 2001 and W.P. No.20591/2001 against such termination. The Hon'ble Madras High Court allowed the writ petitions and the management's Writ Appeals Nos.2043 and 2044 of 2002 against the said petitions, which is still pending. The management thereafter set up its nominees to form a trade union and genuine union filing W.P. No.20/2002 sought for a direction not to register the union. During the pendency of the said writ petition, within few days after filing of the same and after notice was ordered, the management had its outfit registered under name of the "M.R.F. Employees Union" and a writ Petition No.1769/2002 was filed against the said registration. In the said writ petition, the Hon'ble High Court ordered the workers to make a representation to the Registrar of Trade Unions and directed the Registrar of Trade Unions to enquire and pass orders thereon. The Registrar of Trade Unions rejected the said representation against which the petitioner's union filed W.P. No.24183/2005 and the same has been admitted and is pending. In the meantime, as per the direction, the management reinstated the workers except 49 for whose reinstatement, the Division Bench ordered stay in the writ appeal.

7. The contention of the respondent is that the petitioner had chosen only to elaborate about the formation of M.R.F. Thozhilalargal Sangam led by its Union President V. Prakash and more specifically concentrated about the orders passed by the

Hon'ble High Court, Madras in W.P. No.20270/2001, W. P. No.20591/2001 and W. P. No.19/2002, dated 10-6-2002, though the petitioner is not a party to the writ proceedings. He further submitted that the Division Bench of Hon'ble High Court, Madras by its order dated 4-1-2008 in W.A. No.2043 and 2044/2002 was pleased to modify the order in W. P. No.20591/2001 and W. P. No.19/2002 to the extent that the dismissed/ terminated employees had to approach the Labour Court or the Industrial Tribunal. The learned counsel for the respondent further submitted that in S.L.P. No.6004-6006/2009 against the judgment and order, dated 4-1-2008 in W.A. Nos.2043 and 2044/2008 of Hon'ble High Court, Madras was preferred by the M.R.F. Thozilalargal Sangam and the Hon'ble Supreme Court by its record of proceedings dismissed the S.L.P. on 12-5-2009.

8. Neither the petitioner nor the respondent has produced the copies of the said judgments of the Hon'ble Supreme Court and Hon'ble High Court, Madras to come to the just decision of the case. In the absence of sufficient records, this court is not in a position to accept the contention of either the petitioner or the respondent.

9. The contention of the petitioner is that he joined the service of the opposite party management on 9-6-2000 and he was employed without any written order of appointment being given to him and the written order of appointment was given on 15-1-2000 designating him as Apprentice for a period of six months. He further submitted that all the workers were given orders on the expiry of first six months period, except four workmen including him and thereafter no order was communicated to him.

10. On the side of the respondent, it is contended that the petitioner was a trainee and no order in writing was issued to him appointing him as a probationer as contemplated under the certified standing orders, which is normally followed after completion of training period and since the petitioner was a trainee, he cannot have any say regarding his appointment of trainee and continuance of trainee which is in conformity with clause 3.6 of certified standing orders.

11. Clause 3.6 deals with Apprenticeship under the Apprenticeship Act 1961, which runs as follows:-

> "..... Company Training Scheme/Trainee means a learner who is paid stipend and whose terms and conditions are governed by the provisions of the Apprentices Act, 1961 and the amendments thereof or one who is recruited to undergo apprenticeship as per company's scheme either as Production Apprentice or Engineering Apprentice or Apprentice for Service Department. The apprenticeship period will be for 42 months comprising 4 spells, the first spell is for six months and the remaining 3 spells each are for one year duration and the company is not obliged to employ after the conclusion of their apprenticeship. At the expiry of any spell, each training will be assessed and evaluated and on satisfactory completion of the training in each spell, the trainee will be put on to training for next spell. On completion of the total apprenticeship period the services will stand automatically terminated. However, they may be considered for the post of probationer on satisfactory completion of training by the company at its discretion depending upon the exigencies and vacancy position. The status as an apprentice will not change until it is changed by the company in writing.... ...."

12. As per clause 3.6 of apprenticeship under the Apprenticeship Act, 1961, the apprenticeship period will be 42 months comprising four spells, the first spell is six months and the remaining three spells each are for one year. It is no where stated that the appointment order is not necessary for the trainees. Hence, the respondent management should have issued the appointment order to the petitioner, designating him as trainee. Since both the petitioner and the respondent have admitted that the petitioner was trainee at the time of terminating his service, much importance cannot be given for the abovesaid point.

13. The next contention of the petitioner is that since he was active member in the M.R.F. Thozhilalar Sangam and since he was participated in the activities on the said union, he was terminated from service by raising false allegations against him.

14. *Per contra*, the contention of the respondent is that during the period of training, the petitioner had indulged in acts of indiscipline, insubordination, using filthy and obnoxious language, aiding and abetting the co-workers to squat, instigating the other workers were all proved in the enquiry proceedings and hence he was terminated from service. In order to support his claim, the learned counsel for the respondent has relied upon the following decisions:-

2011 L.L.R. 51 :

> Dismissal from service – Of the appellant Manager (Sales) for threatening and abusing his superior–He was dismissed from service for misconduct duly proved in disciplinary enquiry– His writ petition against punishment was dismissed– Hence this writ appeal–In view of gravity of charge against the appellant, the punishment of dismissal cannot be stated to be disproportionate to the misconduct–Principles of natural justice were followed and proper opportunity was given to him - No ground found to interfere with the order of dismissal from service as upheld by learned single Judge.

2010 L.L.R. 600 :

Industrial Disputes Act, 1947 – Section 11A, Power of the Labour Court/Industrial Tribunal to give appropriate relief in cases of dismissal or discharge of the workman – Well settled law – Power under section 11 is not an appellate power – Exercise only when punishment imposed is shockingly disproportionate to charges proved in Departmental Inquiry – Punishment of putting him six stages down in pay scale for charge of misappropriation – Not shockingly disproportionate to the charges proved.

2010 L.L.R. 744 :

Constitution of India, 1950 – Enquiry – Validity of – Principles of natural justice have been followed by the Enquiry Officer – Enquiry cannot be faulted on any ground and the findings are in no manner, perverse – No case is made out for interference with the said orders under Article 226 of the Constitution of India.

2010 L.L.R. 993 :

Departmental proceedings – Judicial review of – Scope of – Judicial review is matters of disciplinary proceedings – Is to find out whether the findings are perverse or unreasonable – Writ court recorded that there is sufficient evidence to support the charges – There is no legal or other infirmity in the order under appeal – Appeal dismissed.

Departmental proceedings – Enquiry report not furnished – In fact the disciplinary authority has not given any findings of its own in respect of charges levelled – Enquiry report annexed with the second show cause notice - No prejudice caused to appellant.

(2008) 5 M.L.J. 733 :

When the charge of habitual absence against the employee was proved and the competent authority/ employer imposed a proper punishment, it is not open to the Central Administrative Tribunal to interfere with the quantum of punishment on the premises that the charge of habitual absence of the employee was not grave. Such order of the CAT is clearly erroneous and is liable to be set aside.

(2008)3 M.L.J. 959 (SC) :

Punishment – Of removal from service – Imposed on respondent/teacher on ground of misconduct as he physically assaulted Principal of School – Order of Tribunal quashing removal order and reducing punishment as being disproportionate – Same upheld by High Court in Writ Petition – Appeal – No good ground for Tribunal to interfere with punishment of removal imposed on respondent – Impugned order of High Court and Tribunal set aside – Appeal allowed.

2005 (2) C.T.C. 730 :

... Workman should have pleaded before employer at second show cause notice stage that proposed punishment was harsh and disproportionate to proved misconduct and that employer acted with *mala fide* – (i) Reading of various decisions would show that the following principles of law is laid down; The Tribunal is empowered to enquiry as to whether the enquiry conducted was fair and any principles of natural justice has been violated in the conduct of the enquiry; (ii) The Tribunal is empowered to enquiry as to whether the management *bona fide* came to the conclusion that the dismissal another punishment for the one which is sought to be meted out except when it finds that action of the management is shockingly disproportionate..... Enquiry was fair and proper and charges were proved and the Tribunal should have approved the action of the employer in dismissing workman.

2001 L.L.R. 587 :

Industrial Disputes Act, 1947 – Section 22 – Prohibition of strikes and lock-outs – Strike in a hospital where public utility services are rendered will contravene the provisions of section 22 – Such a strike would be *per se* illegal – Strike has been totally prohibited in utility service by the notification issued by the State Government – The strike resorted to by the workmen of the hospital is in contravention of the said prohibitory orders of the State Government issued under section 22 of the Industrial Disputes Act and, therefore, this strike is *per se* illegal as it violates the said notification and the prohibition orders.

Dismissal – Of hospital employees for resorting to and instigation for illegal strike - Before initiating disciplinary proceedings, it is not necessary that such a strike be declared as illegal.

2001 L.L.R. 1213 :

Dismissal from service of Assistant Branch Manager – Who was committed various acts of omission and commission during the period of his posting as enumerated in charge sheet – Disciplinary proceedings initiated – Disciplinary authority dismissed the petitioner from service on the basis of enquiry report – Appellate authority by a reasoned order rejected the appeal – Full opportunity is defend himself given in the enquiry – Hence, no illegality proceedings or order –Dismissal from service of petitioner held not illegal.

2001 L.L.R. 401 (M.P. H.C.) :

Dismissal of bus conductor - Checking staff found that out of 23 passengers travelling in the bus 6 were travelling without ticket – The bus has covered 34 kms.

from the place wherefrom 6 passengers had boarded the bus – Enquiry held – Charges proved – Dismissal of the conductor ordered – Challenged – Labour Court vitiated enquiry – Ordered reinstatement without back wages – Industrial Court directed reinstatement of the conductor with full back wages – Writ petition by the management – Corporation – High Court quashed the orders of Labour Court and Industrial Court – Dismissal as ordered by the Corporation upheld – A dishonest person could not be allowed to continue in employment – The conductor has lost the confidence.

2001 L.L.R. 1154 (S.C.) :

..... In such an event if the appellant – Corporation loses its confidence *vis-a-vis* in the employee it will be neither proper nor fair on the part of the court to substitute the finding and confidence of the employee with that of its own by allowing reinstatement – The misconduct stands proved and in such a situation by reason of the gravity of the offence the Labour Court cannot exercise its discretion and alter the punishment – Also High Court was in error in dismissing the writ summarily – The termination order as passed by the Appellant Corporation is restored.

2001 L.L.R. 1237(Kar. H.C.) :

Loss of confidence – When a bus conductor misappropriates money as collected – His reinstatement as awarded by the Labour Court and Learned Single Judge – Cannot be sustained.

2010 L.L.R. 913 (Guj. H.C.)

Dismissal – From service of bus conductor for misconduct of receiving fare and not issuing tickets – Challenged by petitioner – Conductor – For proved misconduct – High Court is of considered opinion-Punishment of dismissal is not in any way disproportionate to the charges levelled against the conductor, particularly taking into account the past record of service – There cannot be any misplaced sympathy in such matters.

2009(5) C.T.C. 160

Departmental Proceedings – Punishment – Past misconduct and record of service – Relevancy of – No need to mention in notice calling for further representation.

(2008) 3 S.C.C. 310

Service law – Probation/Probationer – Termination-Grounds – Unsatisfactory probation – Authority competent to direct termination in case of – Need to give reasons/explanation, if any – Held, assessment of probation has to be made by appointing authority itself – The authority is however not required to give reason for termination except to inform employee that his performance was found unsatisfactory.

15. In order to prove the misconduct of the petitioner, the respondent has marked the complaints received from the Production Supervisor as Ex.R3, another complaint from the staff of the respondent company and the warning letter issued to the petitioner as Ex.R10 and Ex.P11 respectively. Ex.R3 would show the Production Supervisor of the respondent company gave a complaint to the respondent about the misbehaviour committed by the petitioner in the factory premises. A perusal of Ex.R10 would show that the petitioner was irregular in attending the duty, which was reported by the shift supervisor to the respondent management. Ex.R11 warning letter was issued to the petitioner for his unauthorisedly left the work spot. The said documents are not challenged by the petitioner.

16. The final contention of the learned counsel for the petitioner is that the domestic enquiry has not been conducted by the Inquiry Officer as prescribed by law in a neutral manner and he has conducted the domestic enquiry in a biased manner without giving any opportunity, which are entitled for the delinquents as per law as well as by the principles of natural justice and moreover the Inquiry Officer has not heard the contentions of the petitioner and the enquiry report has also been submitted with unjustified findings and in fact the petitioner has not committed any misconduct as alleged by the respondent, but the management had taken action by way of issuing show cause notice and by way of conducting domestic enquiry without following the principles of natural justice and on wrong conclusion by the Inquiry Officer the management dismissed the petitioner.

17. The learned counsel for the respondent would submit that they have followed the principles of natural justice while charging the petitioner and conducting the domestic enquiry by a neutral Inquiry Officer and on proved charges alone, the petitioner had been dismissed from his services as per the principles of natural justice and even in the domestic enquiry, the petitioner had been allowed to be assisted by their co-employee. The petitioner has been given fair chance to cross-examine the witnesses and the Inquiry officer on considering the documents as well the evidences of the management witnesses, had rightly come to the conclusion that the charges of the petitioner were proved and on the conclusion of the report submitted by the Inquiry Officer, the petitioner has been terminated from his service by way of punishment for the misconduct committed by him and hence, there is no scope to intervene in the order of this management by the Labour Court.

18. At this stage when I peruse the domestic enquiry report which has been marked as Ex.R4, relating to the petitioner, we can understand that the petitioner was advised to participate in the enquiry which was conducted from 13-3-2004 to 20-5-2004 and the petitioner has participated in the enquiry. On the side of the respondent, three witnesses were examined and the first two witnesses were not cross-examined by the petitioner and the third witness was cross-examined by him. On the side of the petitioner, neither oral nor documentary evidence was adduced, eventhough sufficient opportunities were given to him. The enquiry was closed 20-5-2004 and based on the evidence available on records, the Enquiry Officer found that the charges framed against the petitioner are proved and accordingly, he submitted his report to the respondent management. Then based on the enquiry report, the respondent management issued a second show cause notice under Ex.R5 calling for his explanation. The petitioner submitted his written explanation under Ex.R6 and since the explanation submitted by the petitioner was not satisfactory, the respondent management dismissed from service.

19. Hence on perusal of Ex.R4 and other documents filed on the side of the respondent, it is evident that the petitioner was given fair opportunity to defend his case and the respondent has correctly followed the procedure for conducting the domestic enquiry as contemplated under labour law. Hence, the enquiry conducted by the respondent management is fair and proper.

20. The learned counsel for the respondent has pointed out the apprenticeship order, which had been issued to the workers of the respondent management, which runs as follows:-

(a) You will be subject to the certified standing orders and regulations as and when become applicable or amended or extended from time to time.

(b) On completion of the apprenticeship period, your services with us as an apprentice will stand automatically terminated.

(c) Should be guilty of any misconduct during the period of apprenticeship, you will be summarily dismissed from apprenticeship without notice or compensation *in lieu of* notice.

(d) The company does not guarantee any automatic confirmation in services at the end of apprenticeship period.

21. The above orders state that on completion of the apprenticeship period, the petitioners' services will stand automatically terminated. Hence, it is the implied factum that the petitioner cannot claim right over the appointment since the appointment itself is not a permanent one or does not guarantee any automatic confirmation in service. In this case, the petitioner has joined as apprentice and during the period of apprentice, he had committed misconducts such as indiscipline, insubordination and aiding and abetting the co-workers to squat, instigating the other workers, which were proved in the domestic enquiry, conducted by the respondent management and hence, the respondent has taken action against the petitioner by terminating him from service, which is not against law.

22. The misconducts committed by the petitioner have been proved by way of conducting the enquiry and the said misconducts are very grave in nature during the period of apprentice. The respondent management has rightly taken the decision by terminating them from service. The decisions cited by the learned counsel for the respondent are squarely applicable to the present facts and circumstances of the case. However, the documents marked under Ex.P1 to Ex.P8 on the side of the petitioner are not supported to his claim. Hence, the petitioner is not entitled for reinstatement with continuity of service and back wages. But at the same time, the petitioner has rendered service in the respondent company for more than three years. He was hailing from poor family and he had been walking to this court for the past four years. Hence, considering the age of the petitioner and his family circumstances, the respondent is directed to pay a monetary compensation of ₹ 10,000 to the petitioner. Accordingly, this point is answered.

23. In the result, the petitioner is not entitled for reinstatement with continuity of service and back wages. However, the respondent is directed to pay a sum of ₹ 10,000 towards the monetary compensation to the petitioner. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 31st day of January 2011.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

———

List of witnesses examined for the petitioner :

P.W.1—22-10-2010 J. Datchinamurthy

List of witnesses examined for the respondent : Nil

List of exhibits marked for the petitioner :

Ex.P1 — 28-1-2004 Bead traceability record and production details.

Ex.P2 — 30-1-2004 First show cause notice

Ex.P3 —	16-3-2004	Explanation given by the petitioner.
Ex.P4 —	29-2-2004	Enquiry notice
Ex.P5 —	3-6-2004	Second show cause notice.
Ex.P6 —	9-6-2004	Explanations given by the petitioner.
Ex.P7 —	11-6-2004	Dismissal order issued by respondent management.
Ex.P8 —	14-3-2007	Failure report issued by the Labour Officer (Conciliation), Pondicherry.

List of exhibits marked for the respondent by consent :

Ex.R1 —	30-1-2004	Show cause notice issued by respondent management with its Tamil translation, marked by consent.
Ex.R2 —	30-1-2004	Written explanation marked by consent.
Ex.R3 —	28-1-2004	Complaint from the Production Supervisor marked by consent.
Ex.R4 —	26-5-2004	Enquiry report marked by consent.
Ex.R5 —	3-6-2004	Second show cause notice marked by consent.
Ex.R6 —	9-6-2004	Written explanation marked by consent.
Ex.R7 —	27-2-2006	Petition filed under section 2A before the Labour Officer (Conciliation), Puducherry marked by consent.
Ex.R8 —	24-7-2006	Counter statement filed by the respondent management marked by consent.
Ex.R9 —	–	Relevant Tamil version of the certified standing orders, marked by consent.
Ex.R10—	6-8-2003	Inter Office Memorandum marked by consent.
Ex.R11—	3-1-2004	Warning letter issued to the petitioner marked by consent.
Ex.R12—	8-1-2004	Copy of unclaimed RPAD cover to the petitioner marked by consent.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(*G.O. Rt. No. 153/AIL/Lab./J/2011, dated 17th August 2011*)

NOTIFICATION

Whereas, the Award in I.D.No. 15/2005, dated 21-12-2010 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Unicorn (Bangalore) Private Limited (ACE Tech. Group), Puducherry and Thiru M. Joseph Beski over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G. O. Ms. No.20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

N. APPA RAO,
Under Secretary to Government (Labour).

———

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. MOHANDASS, M.A., M.L.,
II Additional District Judge,
Presiding Officer, Labour Court.

Tuesday, the 21st day of December 2010

I.D. No. 15/2005

(1) Joseph Besky (Died)
Represented by his legal representatives.
(2) Selvamarie
(3) Emlleraj Moombrin
(4) Jayarani Rathik Kala Mombrun . . Petitioners

Versus

The Managing Partner,
Unicorn (Bangalore) Private Limited,
Mettupalayam, Pondicherry . . Respondent

This industrial dispute coming on 20-12-2010 for final hearing before me in the presence of Thiru R.S. Zivanandam, advocate for the petitioner and Thiruvalargal K.V. Shanmuganathan and L. Vivekananthan and Mrs. V. Vaijayanthimala, advocates for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

AWARD

This industrial dispute arises out of the reference made by the Labour Department, Government of Pondicherry *vide* G.O. Rt. No.4/2005/Lab./J, dated 3-1-2005 for adjudicating the following:-

(1) Whether the non-employment of Thiru M. Joseph Beski by the management of M/s. Unicorn (Bangalore) Private Limited, Pondicherry is justified or not?

(2) To what relief, he is entitled to?

(3) To compute the relief, if any, awarded in terms of money if it can be so computed?

2. The petitioner, in his claim statement, has averred as follows:

The first petitioner was employed for the past 15 years with respondent management and during this lengthy service, he had put in service satisfactorily to his employer with unblemished records. While so, the management of the respondent industry was taken over by Ace Technology Group which started halting one after the other the benefits doled out to the workers by the erstwhile management. The respondent management had developed an animosity over the first petitioner, since he was an active member of the worker union that was derecognised by the respondent management as it raised the demands of the workers.

In these circumstances, to the dismay of the first petitioner, the respondent management on 11-12-2003 without calling any explanation, had issued a memo. placing him under suspension of service pending enquiry upon the charge of abusing and threatening two executives of the respondent management for which they had issued a show cause notice for the irregular attendance of the first petitioner. No such incident as alleged by the respondent management had occurred and in fact, it was the Factory Manager, who had refused to accept the written explanation of the worker for the abovesaid show cause notice. On 19-12-2003 when the petitioner came for the domestic enquiry, he was not allowed to attend to the enquiry. Instead, a memo. afresh was issued charging that he has intimidated the security of the respondent industry on the date of domestic enquiry. During the proceedings of the domestic enquiry, the first petitioner was not given a fair opportunity to represent his side. Based upon the biased report of the Enquiry Officer, the respondent management had terminated the services of the petitioner on 20-1-2004. Aggrieved by the dismissal of the respondent, the petitioner raised an industrial dispute against the management over the wrongful dismissal.

During the pendency of the above industrial dispute, the first petitioner died on 19-12-2009 and hence the legal representatives *i.e.*, the petitioners No.2 to 4 were impleaded in this case. Since the first petitioner died, the other petitioners pray that the reference may be in their favour for deriving the compensation, if the non-employment is justified.

3 In the counter statement, the respondent has stated as follows:-

The petitioner had unauthorisedly absented himself from work for 26 days during the year 2003. In this regard, a show cause notice was issued on 10-12-2003. After receiving the show cause notice, the first petitioner had entered into the company on 11-12-2003 by 4.10 p.m. and misbehaved with the Personal Executive V. Paramananthan. He had also threatened the Personal Executive saying that no memo. should be sent to him and if such things happened, he would break his legs. This incident had taken place in the presence of workers and other executives. In this regard, the respondent had issued a show cause notice to the petitioner on 11-12-2003 and the first petitioner received the said memo. but did not choose to give any reply.

On 19-12-2003 the respondent received a complaint in writing from the Security Guard one P. Rajendran against the first petitioner stating that he had misbehaved with him and abused him using filthy language without any provocation and also indulged in acts of criminal intimidation. On receiving the complaint from the said Security Guard, the respondent issued a show cause notice to the first petitioner and on receiving the said memo. he gave a vague reply denying the allegations. A domestic enquiry was conducted and the first petitioner had participated in the enquiry. He also examined himself as witness. Based on the report of the Enquiry Officer, the respondent management terminated the services of the first petitioner. The enquiry was conducted in accordance with the principles of natural justice. Hence, they pray for dismissal of the industrial dispute.

4. On the side of the petitioner, PW.1 was examined and no documents were marked. On the side of the respondent, RW.1 was examined and Ex.R1 to Ex.R19 were marked.

5. The point for determination is:

Whether the non-employment of the first petitioner is justified and if not, whether the petitioners No.2 to 4 are entitled to get the compensation as legal heirs of the first petitioner?

6. *On the point:*

It is an admitted fact that the petitioner was an employee in the respondent company. The main contention of the petitioner is that he was an Executive Committee member in the Union of the Industrial Estate Workers functioning in the respondent company and

since he was involved in the union activities, he was denied employment by stating that he abused and threatened two executives of the respondent management. In order to prove the same, the petitioner was examined as PW.1 and PW.1 in his evidence has deposed the said version, but no documents were marked on his side.

7. *Per contra*, the contention of the respondent is that the petitioner had unauthorisedly absent himself from work for 26 days during the year 2003 and hence, a show cause notice was issued on 11-12-2003 to the first petitioner, but he did not choose to give any reply. On the side of the respondent, the learned counsel for the respondent relied upon the following decisions:-

2005(2) L.L.N. 661:-

"Misconduct - Insubordination - Acts subversive of discipline - Punishment of dismissal from service - Validity -Workman charged for misconduct of gheraoing senior officers of company for long hours - During gherao one of the officers received injuries - Evidence of management witness and documentary evidence established charge against workman - Order of dismissal from service not interfered with."

AIR 2005 S.C.1993:-

"Misconduct - Order of punishment - Reduction - In absence of factors like punishment being disproportionate or any other mitigating circumstances or past conduct of workman -Labour Court cannot by way of sympathy alone exercise power under section 11 -A and reduce punishment."

2006(1) L.L.N.874:-

"Domestic enquiry - Principles of natural justice - Things admitted, held, need not be proved - Further, in this case, besides admission of abusing superior in filthy language witnesses were also examined for proving the charges."

8. In order to prove the contention of the respondent, Ex.R1 to Ex.R19 were marked. Ex.R1 is the attendance particulars, Ex.R2 is the copy of the memo. issued to the first petitioner. As per Ex.R1 and Ex.R2, the first petitioner took leave for 26 days on loss of pay. Since Ex.R1 is not supported by the attendance register, it cannot be taken into consideration. Further except RW.1, no other witnesses have been examined to prove that he was unauthorised for 26 days.

9. The learned counsel for the respondent would further submit that after receiving the show cause notice, the first petitioner instead of submitting explanation, had entered into the respondent company on 11-12-2003 by 4.10 p.m. and misbehaved with the Personal Executive V. Paramananthan and he threatened the said Paramananthan saying that no such memo. should be sent to him and if such things happened, he would break his legs. In order to prove the same, the respondent has marked the complaint submitted by the said Paramananthan as Ex.R4 and one Murugan as Ex.R5. But the said Paramananthan and Murugan have not been examined as witnesses before this court to prove the said fact. In this regard it is pertinent to state that no employee will speak as against his employer and the said persons, who are salaried employees under the respondent management, are bound to work upon the desire and wish of the respondent. Hence, Ex.R4 and Ex.R5 can also not be taken into consideration.

10. The next contention of the respondent is that on 19-12-2003 they received a complaint in writing from the Security Guard one P. Rajendran against the first petitioner stating that he had misbehaved with him and abused him using filthy language without any provocation and also indulged in acts of criminal intimidation and on receiving the complaint from the said Security Guard, the respondent issued a show cause notice to the first petitioner and on receiving the said memo. he gave a vague reply denying the allegations.

11. On the side of the respondent, the complaint has been received from the said Rajendran and the same was marked as Ex.R9. But the said P. Rajendran has not been examined as a witness to prove that he was threatened by the first petitioner. Hence, the contention of the learned counsel for the respondent in this regard cannot be accepted.

12. The learned counsel for the petitioner would submit that the domestic enquiry conducted by the respondent was partial and biased and during the proceedings of the domestic enquiry, the petitioner was not given a fair opportunity to represent his side.

13. The learned counsel for the respondent would submit that they have followed the principles of natural justice while charging the delinquent and conducting the domestic enquiry by a neutral Inquiry Officer. On proved charges alone, the petitioner had been dismissed from his services as per the principles of natural justice. Even in the domestic enquiry, the petitioner has been allowed to be assisted by his co-employee. The petitioner has been given fair chance to cross-examine the witnesses and he cross-examined the said witnesses. The Inquiry Officer has rightly come to the conclusion that the charges against the petitioner were proved. On the conclusion of the report submitted by the Inquiry Officer,the petitioner has been terminated from his service by way of punishment of the mistakes committed by him. Hence, there is no scope to intervene the order of this management by the Labour Court.

14. At this stage when we peruse the domestic enquiry proceedings Ex.R13 relating to the petitioner, we can understand that three witnesses were examined in the enquiry of the petitioner on the side of the

management. The petitioner was asked to cross-examine the management witnesses and he cross-examined said witnesses. Then the petitioner was examined. Finally, the Inquiry Officer decided the enquiry against the delinquent that all the charges framed against him are proved. Ex.R13 would further reveal that on 2-1-2004 all the three witnesses were examined on the side of the respondent management and on the same day itself, the petitioner was asked to cross-examine them without giving sufficient opportunities to him. Therefore, it is manifest that the Inquiry Officer was posthaste in concluding the enquiry and the Inquiry Officer should not have come to a conclusion without giving due opportunity to the petitioners, which is unwarranted, which shows the biasedness of the Inquiry Officer against the delinquents. Further before terminating the service of the petitioner, the second show cause notice has not been issued to him, which has been admitted by RW.1 during the course of cross-examination.

15. Since the Inquiry Officer himself concluded the charges in a biased manner in the domestic enquiry, we need not go into the sustainability of the charge. Upon the biased enquiry report alone, the management also acted to dismiss their employee, which is against the principles of natural justice. No opportunity has been given to the petitioner either by the Inquiry Officer or by the management before the petitioner has been decided to be dismissed from his services.

16. The learned counsel for the respondent has argued that the petitioner had resorted to commit acts of serious misconduct, such as, threatening the Personal Executive V. Paramananthan and also misbehaved with the Security Guard P. Rajendran by abusing him using filthy language and indulged in the acts of criminal intimidation. But no police complaint was filed against the first petitioner for the said acts. Further no witness was examined on the side of the respondent management before this court to prove that the enquiry was conducted in a neutral manner. When the learned counsel for the petitioner has contended that the enquiry was conducted in a partial and biased manner, it is for the respondent to prove that the enquiry was conducted in a proper manner after giving due opportunity to the petitioners. But the respondent failed to do so. Hence, the decision of dismissal of the first petitioner from the company by the respondent is an erroneous one and is also unjustified.

17. The first petitioner is reported to be died and hence, the relief of reinstatement cannot be given. But his legal heirs *i.e.,* petitioners No.2 to 4 have been added as parties in this industrial dispute and hence they are entitled to get the monetary compensation as per law. Accordingly I decide this point.

18. In the result, the industrial dispute is partly allowed and the respondent management is hereby directed to pay a monetary compensation of ₹ 60,000 to the legal heirs of the first petitioner *i.e.*, petitioners No.2 to 4. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 21st day of December 2010.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court.
Pondicherry.

———

List of witnesses examined for the petitioner :

PW.1—9-9-2010 - Jayarani Rathik Kala Mombrun

List of witnesses examined for the respondent :

RW.1—25-10-2010 - Gnanagurupatham

List of exhibits marked for the petitioner : Nil

List of exhibits marked for the respondent :

Ex.R1 — Attendance particulars

Ex.R2 — Memo. dated 10-12-2003 issued to the first petitioner.

Ex.R3 — Postal receipt

Ex.R4 — Letter sent to the respondent, dated 11-12-2003

Ex.R5 — Letter sent to the respondent , dated 11-12-2003

Ex.R6 — Memo dated 12-12-2003 issued by the respondent.

Ex.R7 — Postal receipt

Ex.R8 — Enquiry notice, dated 16-12-2003

Ex.R9 — Letter sent to the management, dated 19-12-2003

Ex.R10— Memo. dated 19-12-2003 issued to the first petitioner.

Ex.R11— Explanation, dated 19-12-2003 by the first petitioner.

Ex.R12— Memo. dated 30-12-2003 issued by the respondent.

Ex.R13— Enquiry proceedings

Ex.R14— Enquiry report

Ex.R15—Letter sent to the Labour Officer by the respondent, dated 17-2-2004.

Ex.R16— Intimation, dated 20-1-2004 given to the first petitioner.

Ex.R17— Acknowledgment

Ex.R18— Dismissal order, dated 25-2-2004

Ex.R19— Postal receipt

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court.
Pondicherry.